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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 NIKEE N.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL
11 SECURITY,

12 Defendant.

NO: 4:18-CV-5136-TOR

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

13 BEFORE THE COURT are the parties' cross motions for summary
14 judgment. ECF Nos. 13, 14. The Court has reviewed the administrative record
15 and the parties' completed briefing, and is fully informed. For the reasons
16 discussed below, the Court **DENIES** Plaintiff's motion and **GRANTS** Defendant's
17 motion.

18 **JURISDICTION**

19 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g),
20 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* at 1111. An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation omitted).

1 The party appealing the ALJ's decision generally bears the burden of establishing
2 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

3 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered "disabled" within
5 the meaning of the Social Security Act. First, the claimant must be "unable to
6 engage in any substantial gainful activity by reason of any medically determinable
7 physical or mental impairment which can be expected to result in death or which
8 has lasted or can be expected to last for a continuous period of not less than twelve
9 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
10 "of such severity that he is not only unable to do his previous work[,] but cannot,
11 considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy." 42 U.S.C. §
13 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
16 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's
17 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in
18 "substantial gainful activity," the Commissioner must find that the claimant is not
19 disabled. 20 C.F.R. § 416.920(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
4 “any impairment or combination of impairments which significantly limits [his or
5 her] physical or mental ability to do basic work activities,” the analysis proceeds to
6 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
7 this severity threshold, however, the Commissioner must find that the claimant is
8 not disabled. *Id.*

9 At step three, the Commissioner compares the claimant’s impairment to
10 several impairments recognized by the Commissioner to be so severe as to
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
12 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant’s impairment does meet or exceed the severity
16 of the enumerated impairments, the Commissioner must pause to assess the
17 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
18 defined generally as the claimant’s ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations (20 C.F.R.
20 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing other work in the national economy.
9 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
10 must also consider vocational factors such as the claimant's age, education and
11 work experience. *Id.* If the claimant is capable of adjusting to other work, the
12 Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
14 analysis concludes with a finding that the claimant is disabled and is therefore
15 entitled to benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above. *See*
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
19 capable of performing other work, and (2) such work "exists in significant numbers
20

1 in the national economy.” 20 C.F.R. § 416.960(c)(2); *see Tackett*, 180 F.3d at
2 1098-99.

3 **ALJ’S FINDINGS**

4 Plaintiff applied for supplemental security income disability benefits on
5 November 12, 2013, alleging an onset date of January 1, 2009. Tr. 15. Plaintiff’s
6 application was denied initially and upon reconsideration. *Id.* On March 2, 2016,
7 Plaintiff appeared at a video hearing before an Administrative Law Judge (ALJ).
8 *Id.* There were supplemental hearings held on July 21, 2016 and November 21,
9 2016. *Id.* During the July 2016 hearing, Plaintiff amended the alleged onset date
10 to November 29, 2012. *Id.* at 15, 50-51. The ALJ rendered a decision denying
11 Plaintiff benefits on December 29, 2016. *Id.* at 15-26.

12 At step one of the sequential analysis, the ALJ found that Plaintiff had not
13 engaged in substantial gainful activity since November 12, 2013, the application
14 date. *Id.* at 17. At step two, the ALJ found that Plaintiff had the following severe
15 impairments: ankylosing spondylitis; fibromyalgia; trochanteric bursitis of left hip;
16 learning disability; attention deficit hyperactivity disorder (ADHD); depression
17 and anxiety. *Id.* At step three, the ALJ found that Plaintiff’s severe impairments
18 did not meet or medically equal a listed impairment. *Id.* at 17-19. The ALJ then
19 determined that Plaintiff had the RFC
20

1 to perform sedentary work as defined in 20 CFR 416.967(a) except
2 she can never climb ladders, ropes or scaffolds, work at unprotected
3 heights or in proximity to hazards. She can occasionally climb ramps
4 and stairs, stoop, kneel, crouch and crawl. She can occasionally reach
5 overhead with the right upper extremity. In order to meet ordinary
6 and reasonable employer expectations regarding attendance,
7 production and work place behavior, the claimant can understand,
8 remember and carry out unskilled, routine and repetitive work that can
be learned by demonstration and in which tasks to be performed are
predetermined by the employer. She can cope with occasional work
setting change and occasional interaction with supervisors. She can
work in proximity to coworkers but not in a team or cooperative
effort. She can perform work that does not require interaction with
the general public as an essential element of the job but occasional
incidental contact with the general public is not precluded.

9 *Id.* at 19-21. At step four, the ALJ found that Plaintiff had no relevant past work
10 experience. *Id.* at 24. At step five, after considering Plaintiff's age, education,
11 work experience, and residual functional capacity, the ALJ found that Plaintiff was
12 capable of performing in representative occupations, such as assembler, escort
13 vehicle driver, and document preparer, which exist in significant numbers in the
14 national economy. *Id.* at 25. On that basis, the ALJ concluded that Plaintiff was
15 not disabled as defined in the Social Security Act. *Id.*

16 On June 7, 2016, the Appeals Council declined Plaintiff's request for
17 review, making the ALJ's decision the Commissioner's final decision for purposes
18 of judicial review. *Id.* at 1; 42 U.S.C. §§ 405(g), 1383(c)(3); 20 C.F.R. §§
19 416.1481, 422.210.

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ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying her supplemental security income disability benefits under Title XVI of the Social Security Act. Plaintiff raises four issues for review:

- (1) Whether the ALJ properly weighed the opinions of Plaintiff's medical providers;
- (2) Whether the ALJ properly evaluated Plaintiff's subjective complaints;
- (3) Whether the ALJ properly evaluated Plaintiff's mental impairments at step-three; and
- (4) Whether the ALJ properly evaluated Plaintiff's capability to perform work in the national economy at step-five.

ECF No. 13 at 10. The Court evaluates each issue in turn.

DISCUSSION

A. Opinions of Medical Providers

First, Plaintiff faults the ALJ for improperly discounting the opinions of her treating physician, Dr. Meneleo Liligan, and the opinions of examining physician Thomas Genthe, Ph.D. ECF Nos. 13 at 12-15; 15 at 1-6. The ALJ did not reject either opinion entirely, but instead gave "little weight" to Dr. Liligan's opinion and failed to directly discuss Dr. Genthe's opinions in her decision. Tr. 28-29.

In analyzing an ALJ's weighing of medical evidence, a reviewing court distinguishes between the opinions of three types of physicians: "(1) those who

1 treat the claimant (treating physicians); (2) those who examine but do not treat the
2 claimant (examining physicians); and (3) those who neither examine nor treat the
3 claimant [but who review the claimant's file] (nonexamining [or reviewing]
4 physicians).” *Holohan*, 246 F.3d at 1201-02 (citations omitted). Generally, the
5 opinion of a treating physician carries more weight than the opinion of an
6 examining physician, and the opinion of an examining physician carries more
7 weight than the opinion of a reviewing physician. *Id.* In addition, the
8 Commissioner’s regulations give more weight to opinions that are explained than
9 to opinions that are not, and to the opinions of specialists on matters relating to
10 their area of expertise over the opinions of non-specialists. *Id.* (citations omitted).

11 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
12 reject it only by offering “clear and convincing reasons that are supported by
13 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
14 If, however, “a treating or examining doctor’s opinion is contradicted by another
15 doctor’s opinion, an ALJ may only reject it by providing specific and legitimate
16 reasons that are supported by substantial evidence.” *Id.* Regardless of the source,
17 an ALJ need not accept a physician’s opinion that is “brief, conclusory and
18 inadequately supported by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*,
19 554 F.3d 1219, 1228 (9th Cir. 2009) (quotation and citation omitted).

1 “Where an ALJ does not explicitly reject a medical opinion or set forth
2 specific, legitimate reasons for crediting one medical opinion over another, he
3 errs.” *Garrison*, 759 F.3d at 1012. “In other words, an ALJ errs when he rejects a
4 medical opinion or assigns it little weight while doing nothing more than ignoring
5 it, asserting without explanation that another medical opinion is more persuasive,
6 or criticizing it with boilerplate language that fails to offer a substantive basis for
7 his conclusion.” *Id.* at 1012-13. That said, the ALJ is not required to recite any
8 magic words to properly reject a medical opinion. *Magallanes v. Bowen*, 881 F.2d
9 747, 755 (9th Cir. 1989) (stating that the Court may draw reasonable inferences
10 when appropriate). “An ALJ can satisfy the ‘substantial evidence’ requirement by
11 ‘setting out a detailed and thorough summary of the facts and conflicting clinical
12 evidence, stating his interpretation thereof, and making findings.’” *Garrison*, 759
13 F.3d at 1012 (quoting *Reddick*, 157 F.3d at 725).

14 **1. Dr. Liligan**

15 On July 5, 2016, Dr. Liligan completed a “Medical Report” at the request of
16 Plaintiff’s Counsel, in which he was prompted to answer several questions
17 “concern[ing] your patient’s application for Social Security Disability.” Tr. 1035.
18 In the Medical Report, Dr. Liligan opined that work on a continuous basis would
19 aggravate Plaintiff’s hip and back pain, Plaintiff was limited to sedentary work,
20 and Plaintiff would be absent from work four or more days per month due to her

1 medical impairments. *Id.* at 1035-36. Dr. Liligan did not elaborate or provide any
2 reasoning for these limitations.

3 The ALJ assigned great weight to Dr. Liligan's opinion that Plaintiff was
4 limited to sedentary work but assigned little weight to his opinion that Plaintiff
5 would be absent from work more than four days per month. *Id.* at 23. The latter
6 opinion is inconsistent with the opinions of Dr. Dale Donahue and Dr. Dale
7 Thuline, whom agreed Plaintiff was limited to sedentary work but found her
8 capable of sustaining a 40-hour workweek. *Id.* at 116-18, 131-33. As a
9 contradicted opinion, the Court must determine whether the ALJ provided specific
10 and legitimate reasons supported by substantial evidence in assigning the opinion
11 little weight.

12 The ALJ provided two primary reasons for assigning little weight to Dr.
13 Liligan's opinion that Plaintiff would be absent from work four or more days per
14 month due to her impairments: (1) Dr. Liligan failed to provide an explanation for
15 this limitation, and (2) the available evidence did not to support Dr. Liligan's
16 assessment, including Plaintiff's ability to attend her frequent medical
17 appointments without difficulty. *Id.* at 23-24 ("Although her treating provider
18 opined she would be absent from work more than four days per month due to her
19 impairments, he failed to provide an explanation for his opinion and the available
20 evidence fails to support this assessment."). Plaintiff contends these were not valid

1 reasons for rejecting a treating provider's opinions because (1) the regulations do
2 not allow for a treating source to be rejected simply because the doctor did not
3 fully explain how he reached his conclusions, (2) deference is owed the treating
4 provider even when the record does not wholly support his assessments, and (3)
5 the ALJ's mischaracterized Plaintiff's difficulty attending her appointments. ECF
6 No. 13 at 13-14. For reasons discussed below, the Court finds that the ALJ did in
7 fact provide specific and legitimate reasons for giving this particular opinion "little
8 weight." Tr. 23.

9 First, it is the ALJ's duty to resolve conflicting medical opinions. *Thomas v.*
10 *Barnhart*, 278 F.3d 947, 956 (9th Cir. 2002). Significantly, when evaluating
11 conflicting medical opinions, an ALJ need not accept a medical opinion that is
12 inadequately supported by the record as a whole or by objective medical findings.
13 *Batson v. Comm'r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004)
14 ("[A]n ALJ may discredit treating physicians' opinions that are conclusory, brief,
15 and unsupported by the record as a whole . . . or by objective medical findings.").
16 Here, the ALJ limited the weight of Dr. Liligan's opinion regarding the severity of
17 Plaintiff's impairments—specifically, her likely absence from work four or more
18 days per month—as the opinion was unsupported by objective medical findings.
19 Tr. 1036. As the ALJ observed, though Dr. Liligan opined Plaintiff would be
20 absent from work more than four days per month due to joint pain and stiffness,

1 Plaintiff's medical records presented "little evidence of active inflammation or
2 obvious joint swelling," "no evidence of decreased strength," and confirmed that
3 Plaintiff "was able to clasp objects and fully close her hand." Tr. 24. The ALJ's
4 resolution of the conflicting opinions is reasonable and must be upheld. *See*
5 *Batson*, 359 F.3d at 1193 ("[T]he Commissioner's finding are upheld if supported
6 by inferences reasonably drawn from the record . . . and if evidence exists to
7 support more than one rationale interpretation, we must defer to the
8 Commissioner's decision.").

9 Second, the ALJ properly credited little weight to Dr. Liligan's opinion
10 because he did not adequately explain how he reached his conclusion that
11 Plaintiff's hip pain and ankylosing spondylitis would cause Plaintiff to be absent
12 from work more than four days per month. *Id.* at 23. The "Medical Report"
13 completed by Dr. Liligan contained a series of questions with check boxes next to
14 them and space provided for a brief written explanation if necessary. *See id.* at
15 1035-37. Question 11 asked Dr. Liligan if it is "more probable than not that your
16 patient would miss some work due to medical impairments," after which Dr.
17 Liligan checked the "yes" box. *Id.* at 1036. Next, when asked how many days his
18 client would miss on the average per month, Dr. Liligan checked the box next to "4
19 or more days per month." *Id.* When asked to "[p]lease explain," Dr. Liligan did
20 not provide any further explanation. *Id.*

1 The ALJ gave this opinion “little weight” because Dr. Liligan provided no
2 explanation as to how he reached the conclusion that Plaintiff would miss four or
3 more days of work per month. Plaintiff argues that this is not a specific and
4 legitimate reason to reject Dr. Liligan’s opinion. ECF No. 13 at 13-14. However,
5 as discussed, when evaluating conflicting medical opinions, an ALJ need not
6 accept a medical opinion if that opinion is brief, conclusory, and inadequately
7 supported by clinical findings. *See Bayliss*, 427 F.3d at 1216; *Batson*, 359 F.3d at
8 1195; *Morgan*, 169 F.3d at 601-02. Because Dr. Liligan’s opinion was conclusory,
9 brief, and unsupported by clinical evidence, the ALJ’s resolution of the conflicting
10 opinions is reasonable.

11 Finally, the ALJ did not err by citing Plaintiff’s daily activities, particularly
12 Plaintiff’s ability to attend frequent medical appointments, as an additional reason
13 for discrediting Dr. Liligan’s opinion. In resolving conflicting medical opinions,
14 an ALJ may also discount a doctor’s opinion when it is inconsistent with a
15 claimant’s activities. *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 601-
16 02 (9th Cir. 1999) (ALJ may discount physician’s opinion regarding severity of
17 limitations when inconsistent with claimant’s activities of daily living). While the
18 Court agrees with Plaintiff that her ability to attend medical appointments does not
19 directly equate to her ability to show up for full-time work, the comparison is not
20 necessarily invalid, as Plaintiff contends. ECF No. 13 at 14. Plaintiff’s activities

1 of daily living, which includes her ability “to attend scheduled visits with her
2 primary care provider and rheumatologist without evidence of any rescheduling,”
3 reasonably suggests that Dr. Liligan’s opinion that Plaintiff would be absent from
4 work more than four days per month is “not fully consistent with her treatment
5 notes.” Tr. 24. Moreover, this is not the only piece of evidence the ALJ relied on
6 to discount Dr. Liligan’s opinion. *See id.* (“Her treatment notes show she was able
7 to make long drives to her rheumatology appointments and during an office visit
8 she reported working in the yard moving branches.”).

9 **2. Dr. Genthe**

10 On March 27, 2013, Dr. Genthe performed a psychological evaluation of
11 Plaintiff. *Id.* at 392-402. In summarizing his clinical findings and conclusions, Dr.
12 Genthe opined that Plaintiff’s ability to understand and remember short, simple
13 instructions was poor; her ability to understand and remember detailed instructions
14 was poor; her ability to carry out short, simple instructions in a reasonable amount
15 of time was poor; her ability to carry out detailed instructions in a reasonable
16 amount of time was fair to poor; her ability to sustain an ordinary routine without
17 supervision was poor; her ability to work with or near others without being
18 distracted by them was poor; and her ability to respond appropriately to changes in
19 the work setting was poor. *Id.* at 402. Dr. Genthe further noted that Plaintiff’s
20 cognitive limitations would likely hinder her acquisition of many important skills

1 in a reasonable amount of time and Plaintiff would likely perform best on tasks
2 that are relatively simple, repetitive and do not demand her cognitive flexibility.
3 *Id.* As such, Dr. Genthe concluded that Plaintiff's ability to function would likely
4 be best in environments that do not offer significant distractions. *Id.*

5 Plaintiff argues that the ALJ erred by failing to directly address Dr. Genthe's
6 opinions. ECF No. 13 at 15. Defendant concedes that the ALJ did not separately
7 address Dr. Genthe's opinions in the decision. ECF No. 14 at 10. However,
8 Defendant asserts that the ALJ's failure to do so was harmless because "the ALJ
9 adequately accounted for most, if not all of the limitations Dr. Genthe assessed
10 when she included numerous mental limitations in the RFC." *Id.* at 11. The Court
11 ultimately agrees with Defendant.

12 A district court "may not reverse an ALJ's decision on account of an error
13 that is harmless." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). An error
14 is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability
15 determination." *Id.* at 1115 (quotation and citation omitted). Here, any potential
16 error resulting from the ALJ's failure to discuss Dr. Genthe's opinions is harmless
17 in this case because the ALJ adequately incorporated the mental limitations
18 discussed by Dr. Genthe into the RFC. Dr. Genthe opined that Plaintiff's ability to
19 understand and remember short, simple instructions or detailed instructions was
20 poor, Plaintiff's ability to carry out short, simple instructions in a reasonable

1 amount of time was also poor, and Plaintiff's ability to carry out detailed
2 instructions in a reasonable amount of time was fair to poor. Tr. 402. The ALJ
3 accounted for these limitations in the RFC by stating that Plaintiff "can understand,
4 remember and carry out unskilled, routine and repetitive work that can be learned
5 by demonstration and in which tasks to be performed are predetermined by the
6 employer." *Id.* at 20. Dr. Genthe also opined that Plaintiff's ability to sustain an
7 ordinary routine without supervision was poor, her ability to work with or near
8 others without being distracted by them was poor, and her ability to respond
9 appropriately to changes in the work setting was also poor. *Id.* at 402. The RFC
10 accounted for these limitations by restricting Plaintiff to only occasional work
11 setting changes, occasional interaction with supervisors, and working in proximity
12 to coworkers but not in a team or cooperative effort. *Id.* at 20. Finally, the RFC
13 also accounted for Dr. Genthe's opinion that Plaintiff had a fair ability to interact
14 appropriately with the public, get along with coworkers and respond appropriately
15 to criticism from supervisors by restricting Plaintiff to performing "work that does
16 not require interaction with the general public as an essential element of the job but
17 occasional incidental contact with the general public is not precluded." *Id.* The
18 connection between Dr. Genthe's findings and the RFC are readily apparent.

19 Considering the record as a whole, and the ALJ's explanation of her
20 decision, Plaintiff has not demonstrated that the decision would have been any

1 different had the ALJ directly addressed Dr. Genthe’s opinions, beyond
2 incorporating the limitations in the RFC. The ALJ’s decision makes it plain that
3 the ALJ would have reached the same conclusion—that Plaintiff was fit for
4 sedentary work with certain additional limitations—had the ALJ expressly
5 discussed Dr. Genthe’s opinions in her decision. Because Plaintiff cannot
6 demonstrate that the alleged error prejudiced her, any error in the ALJ’s weighing
7 of Dr. Genthe’s opinion is harmless. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054
8 (9th Cir. 2012) (“The burden is on the party claiming error to demonstrate not only
9 the error, but also that if affected his ‘substantial rights,’ which is to say, not
10 merely his procedural rights.”) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09
11 (2009)).

12 **B. Adverse Credibility Determination**

13 Next, Plaintiff asserts that the ALJ erred by failing to provide clear and
14 convincing reasons for rejecting Plaintiff’s subjective complaints. ECF Nos. 13 at
15 15-18; 15 at 6-8. Specifically, Plaintiff faults the ALJ for: (1) finding that
16 Plaintiff’s activities were inconsistent with disability, and (2) concluding that the
17 objective evidence in the record does not fully support Plaintiff’s complaints of
18 disabling limitations. ECF No. 13 at 17-18.

19 In social security proceedings, a claimant must prove the existence of
20 physical or mental impairment with “medical evidence consisting of signs,

1 symptoms, and laboratory findings.” 20 C.F.R. § 404.1508. A claimant’s
2 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§
3 404.1508; 404.1527. Once an impairment has been proven to exist, the claimant
4 need not offer further medical evidence to substantiate the alleged severity of his or
5 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991). As long as
6 the impairment “could reasonably be expected to produce [the] symptoms,” 20
7 C.F.R. § 404.1529(b), the claimant may offer a subjective evaluation as to the
8 severity of the impairment. *Id.* This rule recognizes that the severity of a
9 claimant’s symptoms “cannot be objectively verified or measured.” *Id.* at 347
10 (quotation and citation omitted).

11 However, in the event an ALJ finds the claimant’s subjective assessment
12 unreliable, “the ALJ must make a credibility determination with findings
13 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
14 discredit claimant’s testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir.
15 2002). In making such determination, the ALJ may consider, *inter alia*: (1) the
16 claimant’s reputation for truthfulness; (2) inconsistencies in the claimant’s
17 testimony or between his testimony and his conduct; (3) the claimant’s daily living
18 activities; (4) the claimant’s work record; and (5) testimony from physicians or
19 third parties concerning the nature, severity, and effect of the claimant’s condition.
20 *See id.* If there is no evidence of malingering, the ALJ’s reasons for discrediting

1 the claimant’s testimony must be “specific, clear and convincing.” *Chaudhry v.*
2 *Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (quotation and citation omitted). The
3 ALJ “must specifically identify the testimony she or he finds not to be credible and
4 must explain what evidence undermines the testimony.” *Holohan v. Massanari*,
5 246 F.3d 1195, 1208 (9th Cir. 2001).

6 Here, the ALJ found that the medical evidence confirmed the existence of
7 medical impairments which could reasonably be expected to cause some of
8 Plaintiff’s alleged symptoms. Tr. 20-21. However, the ALJ did not credit
9 Plaintiff’s testimony about the intensity, persistence, and limiting effects of the
10 symptoms. *Id.* Rather, the ALJ concluded that Plaintiff’s statements were “not
11 entirely consistent with the medical evidence and other evidence in the record.” *Id.*
12 There is no evidence of malingering in this case, and therefore the Court must
13 ultimately determine whether the ALJ provided specific, clear and convincing
14 reasons not to credit Plaintiff’s testimony of the limiting effect of her symptoms.
15 *Chaudhry*, 688 F.3d at 672. The Court concludes that the ALJ did provide
16 specific, clear and convincing reasons.

17 To support her adverse credibility determination, the ALJ consulted
18 Plaintiff’s medical records, summarized the relevant records, and cited to portions
19 of the record which were inconsistent with the severity of symptoms and
20 limitations Plaintiff alleged. First, regarding Plaintiff’s physical complaints, the

1 ALJ noted that Plaintiff testified she would be unable to make it to work most days
2 due to joint pain and stiffness. Tr. 24. The ALJ concluded, however, that
3 “[Plaintiff’s] allegations of a disabling condition are not fully consistent with her
4 treatment notes.” *Id.* For example, while physical examinations were positive for
5 tenderness in her lumbar and thoracic spine, sacroiliac joints and upper extremities,
6 there was little evidence of active inflammation or obvious joint swelling. *Id.* And
7 while Plaintiff experienced some diminished range of motion due to pain in her
8 sacroiliac joints, hips, knees, ankles, toes and right shoulder, there was no evidence
9 of decreased strength and Plaintiff was able to clasp objects and fully close her
10 hand. *Id.* Based on the record, the ALJ concluded that “the objective medical
11 evidence does not reasonably substantiate [Plaintiff’s] allegations about the
12 intensity, persistence and functionally limiting effects of the symptoms.” Tr. 24.

13 While Plaintiff faults the ALJ for not finding her symptoms sufficiently
14 severe to prevent gainful employment, the Court concludes that Plaintiff has failed
15 to demonstrate that the records relied on by the ALJ do not constitute sufficient
16 evidence of Plaintiff’s physical mobility and functional limitations. “While
17 subjective pain testimony cannot be rejected on the sole ground that it is not fully
18 corroborated by objective medical evidence, the medical evidence is still a relevant
19 factor in determining the severity of the claimant’s pain and its disabling effects.”
20 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citation omitted). Such

1 inconsistencies between Plaintiff's alleged limitations and medical evidence
2 provide a permissible reason for discounting Plaintiff's credibility. *See Thomas*,
3 278 F.3d at 958-59 (explaining if the ALJ finds that a claimant's testimony as to
4 the severity of her pain and impairments is unreliable, the ALJ must make a
5 credibility determination and, in doing so, "[t]he ALJ may consider . . . testimony
6 from physicians and third parties concerning the nature, severity and effect of the
7 symptoms of which the claimant complains.") (internal citations and modifications
8 omitted).

9 Next, the ALJ addressed the degree of limitation caused by Plaintiff's
10 mental impairments. Tr. 24. The ALJ observed that while Plaintiff's treatment
11 notes showed a history of ADHD, learning disorder, depression and anxiety, "there
12 is no evidence of mental health treatment after August 2014 when Plaintiff was
13 discharged for failure to attend her scheduled appointments without an
14 explanation." *Id.* The ALJ further observed that mental status examinations from
15 Plaintiff's primary care provider noted Plaintiff's mood, affect, attention and
16 concentration as normal. *Id.* Although recognizing that physical pain would be
17 expected to limit Plaintiff's ability to attend and concentrate, the ALJ concluded
18 that the objective medical evidence was nonetheless consistent with the ability to
19 perform unskilled work. *Id.* Based on this evidence, the ALJ concluded that
20 "[Plaintiff] does experience some limitations but not to the extent alleged." *Id.* As

1 discussed above, the inconsistencies between Plaintiff's alleged limitations and
2 medical evidence provide a permissible reason for discounting Plaintiff's
3 credibility. *Thomas*, 278 F.3d at 958-59.

4 Finally, the ALJ considered Plaintiff's activities of daily living in assessing
5 Plaintiff's credibility. The ALJ ultimately concluded that Plaintiff's reported
6 activities of daily living and social interaction are inconsistent with her allegations
7 of severely limiting symptoms. Tr. 24. Regarding Plaintiff's alleged physical
8 limitations, the ALJ noted that Plaintiff was able to attend scheduled visits with her
9 primary care provider and rheumatologist without evidence of any rescheduling,
10 and that Plaintiff had testified she cared for her young children by herself when her
11 husband was working and she continues to help since he stopped working, she
12 plays outside with the children, she prepares meals, and Plaintiff's "treatment notes
13 show she was able to make long drives to her rheumatology appointments and
14 during an office visit she reported working in the yard moving branches." *Id.* As
15 for her mental impairments, the ALJ observed that Plaintiff was able to follow
16 recipes in a cookbook and recall recipes from memory, Plaintiff was planning to
17 start GED classes, she was able to read and help her children with simple
18 homework, she uses a computer to access Facebook, she watches television and
19 plays games with her children, all of which is consistent with the ability to perform
20 unskilled work. The ALJ also noted that Plaintiff's ability to attend appointments,

1 socialize with a friend next door and shop in stores also supports her ability to
2 perform work with occasional contact with supervisors and occasional, incidental
3 contact with the public. *Id.*

4 Evidence about daily activities is properly considered in making a credibility
5 determination. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). In evaluating
6 credibility, an ALJ may properly consider “whether the claimant engages in daily
7 activities inconsistent with the alleged symptoms.” *Molina*, 674 F.3d at 1113
8 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007)). “Even
9 where those activities suggest some difficulty functioning, they may be grounds for
10 discrediting the claimant’s testimony to the extent that they contradict claims of a
11 totally debilitating impairment.” *Id.* The ALJ did not err in concluded that certain
12 activities Plaintiff engages in, such as cooking, doing yardwork, attending
13 appointments and taking care of her children, demonstrate greater exertional
14 abilities than the severe limitations claimed by Plaintiff.

15 In sum, the ALJ recognized Plaintiff’s impairments in assigning a sedentary
16 work RFC, but did not credit Plaintiff’s subjective claims to the full extent that
17 Plaintiff claimed she was severely limited in her functionality. Tr. 24. The ALJ’s
18 decision provides specific, clear and convincing reasons supported by substantial
19 evidence sufficient for this Court to conclude that the adverse credibility
20 determination was not arbitrary.

1 **C. The “Paragraph C” Criteria Under Listings 12.00**

2 Plaintiff asserts that the ALJ failed to evaluate the evidence and properly
3 analyze her physical impairments under Listing 14.09 (inflammatory arthritis) at
4 step three of the sequential evaluation process. ECF No. 13 at 18-19. Specifically,
5 Plaintiff argues that the ALJ committed reversible error by failing to obtain
6 additional medical expert testimony to determine whether Plaintiff equaled Listing
7 14.09 when “[Plaintiff] had a history of left hip and foot pain and fatigue and
8 malaise, along with myalgia throughout her body” and “had marked limitations in
9 concentration, persistence and pace due to the amount of bad days and flares she
10 has.” *Id.* at 19.

11 At step three of the sequential evaluation process, the ALJ considers whether
12 one or more of the claimant’s impairments meets or equals any of the impairments
13 listed in 20 C.F.R. Pt. 404, Subpt. P, App. 1 (the “Listings”). *See* 20 C.F.R. §§
14 404.1520(a)(4)(iii), 416.920(a)(4)(iii); *Tackett*, 180 F.3d at 1098. “If a claimant
15 has an impairment or combination of impairments that meets or equals a condition
16 outlined in [the Listings], then the claimant is presumed disabled” without further
17 inquiry. *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001) (citing 20 C.F.R. §
18 404.1520(d)). “An ALJ must evaluate the relevant evidence before concluding that
19 a claimant’s impairments do not meet or equal a listed impairment.” *Id.* “A
20 boilerplate finding is insufficient to support a conclusion that a claimant’s

1 impairment does not do so.” *Id.* (citing *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th
2 Cir. 1990)).

3 In her decision, the ALJ “gave particular attention to Listing 14.09” when
4 evaluating Plaintiff’s ankylosing spondylitis. Tr. 17. Listing 14.09 contains four
5 separate paragraphs—(A) through (D)—any one of which a claimant must satisfy
6 to establish the requisite level of severity to meet the Listing. *See* 20 C.F.R. pt.
7 404, subpt. P, app. 1 § 14.09. The ALJ determined that the available medical
8 evidence did not demonstrate the required level of severity under any of the four
9 paragraphs in Listing 14.09. *Id.* at 17-18. To support this finding, the ALJ
10 observed that “[Plaintiff’s] treatment notes fail to show she was unable to ambulate
11 or perform fine and gross movements effectively” and “there was no evidence of
12 deformity in one or more major peripheral joints, ankylosis of the dorsolumbar or
13 cervical spine or repeated manifestations of inflammatory arthritis.” *Id.* at 18.

14 Plaintiff does not contest the ALJ’s analysis of Listing 14.09, but instead
15 argues that the ALJ was required to request supplemental medical expert testimony
16 to determine whether Plaintiff satisfied the Listing. ECF No. 13 at 19. However,
17 Plaintiff provides no legal authority to support this position. Defendant asserts that
18 additional medical expert testimony was unnecessary because the ALJ had
19 sufficient evidence to evaluate Plaintiff’s physical conditions. In her Reply
20 Memorandum, Plaintiff did not respond to Defendant’s arguments.

1 The Court finds that Plaintiff has not demonstrated that the ALJ erred in her
2 step-three analysis. As Defendant notes, a court will not find that the ALJ's step
3 three analysis was erroneous where the claimant proffers no plausible theory as to
4 how her impairments satisfied the specific criteria for any given Listing. *Lewis v.*
5 *Apfel*, 236 F.3d 503, 514 (9th Cir. 2001). Not only has Plaintiff failed to
6 demonstrate how her impairments meet the requirements for Listing 14.09, but she
7 has also failed to establish why additional medical expert testimony was necessary
8 given the extensive medical record before the ALJ.

9 **D. Step-Five Burden**

10 Finally, Plaintiff contends that the ALJ erred by providing an incomplete
11 hypothetical to the vocational expert at Plaintiff's hearing. ECF No. 13 at 19-20.
12 The ALJ provided the following hypothetical to the vocational expert:

13 [O]ur hypothetical person has no past relevant work. Let's further
14 assume this hypothetical person is limited to sedentary work except
15 this person can never climb ladders, ropes or scaffolds, work at
16 unprotected heights or in proximity to hazards. This individual can
17 occasionally climb ramps and stairs, stoop, kneel, crouch and crawl.
18 This individual can occasionally reach overhead with the right upper
19 extremity. This individual can perform work in which concentrated
20 exposure to vibration is not present. In order to meet ordinary and
reasonable employer recommendations regarding attendance,
production and workplace behavior, this individual can understand,
remember and carry out unskilled, routine and repetitive work that can
be learned by demonstration and in which tasks to be performed are
predetermined by the employer. This individual can cope with
occasional work setting change and occasional interaction with
supervisors. This individual can work in proximity to coworkers but

1 not in a team or cooperative effort. The individual can perform work
2 that does not require interaction with the general public as an essential
element of the job but occasional incidental contact is not precluded.

3 Tr. 81-82. The expert relied on this hypothetical to determine that Plaintiff was
4 capable of working as a production assembler, inspector and hand packager, or a
5 nut and bolt assembler. *Id.* at 82.

6 Plaintiff contends that the ALJ erroneously excluded “the impairments set
7 forth by Dr. Liligan and Dr. Genthe,” as discussed in Part A of this Order. ECF
8 No. 13 at 20. In Plaintiff’s view, when this evidence is properly considered at
9 step-five, “the evidence establishes that [Plaintiff] is disabled.” *Id.*

10 An ALJ need not include limitations in the hypothetical that the ALJ has
11 concluded are not supported by substantial evidence in the record. *See Osenbrock*
12 *v. Apfel*, 240 F.3d 1157, 1163-64 (9th Cir. 2001). As discussed, the ALJ did not
13 err in excluding Dr. Liligan’s alleged limitations in formulating Plaintiff’s RFC.
14 As such, the ALJ did not err in excluding them from the hypothetical. The ALJ
15 considered the medical evidence and Plaintiff’s testimony regarding the asserted
16 limitations. The ALJ ultimately concluded that the evidence only established that
17 Plaintiff had some, but not all, of the alleged limitations. Tr. 25. These were the
18 limitations the ALJ found supported by substantial evidence in the record. The
19 ALJ concluded further limitations were not supported by the record and, as
20 articulated above, this conclusion was not erroneous. Moreover, as noted, the ALJ

1 did in fact incorporate Dr. Genthe's opinions into the RFC. Accordingly, the
2 hypothetical the ALJ used was "accurate, detailed, and supported by the medical
3 record," and the ALJ was then permitted to rely on the vocational expert's
4 testimony. *See Tackett*, 180 F.3d at 1101.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 1. Plaintiff's Motion for Summary Judgment (ECF No. 13) is **DENIED**.

7 2. Defendant's Motion for Summary Judgment (ECF No. 14) is

8 **GRANTED.**

9 The District Court Executive is hereby directed to file this Order, enter
10 Judgment for Defendant, provide copies to counsel, and **CLOSE** this file

11 **DATED** May 16, 2019.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge